



[4910-EX-P]

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 396**

**[Docket No. FMCSA-2019-0075]**

**RIN 2126-AC29**

**Passenger Carrier No-Defect Driver Vehicle Inspection Reports**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FMCSA rescinds the requirement that drivers of passenger-carrying commercial motor vehicles (CMVs) operating in interstate commerce submit, and motor carriers retain, driver-vehicle inspection reports (DVIRs) when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIRs). This final rule removes an information collection burden without adversely impacting safety.

**DATES:** Effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. José Cestero, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-5541, [jose.cestero@dot.gov](mailto:jose.cestero@dot.gov).

**I. Rulemaking Documents**

**A. Availability of Rulemaking Documents**

For access to docket FMCSA-2019-0075 to read background documents and comments received, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2019-0075> at any time, or to Docket Operations at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**B. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

**II. EXECUTIVE SUMMARY**

This rule affects all passenger carriers currently subject to 49 CFR 396.11, Driver vehicle inspection reports (DVIR). As a result of the Agency's ongoing effort to evaluate existing regulations for necessity and effectiveness, FMCSA rescinds the requirement that drivers of passenger-carrying commercial motor vehicles (CMVs) operating in interstate commerce submit, and motor carriers retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIRs). This final rule removes an information collection burden without impacting safety adversely.

**Benefits and Costs**

Current regulations require drivers employed by passenger carriers – except drivers for private (nonbusiness) passenger carriers, driveaway-towaway operations, or

those operating only one CMV – to report on the DVIR any vehicle defects noted or discovered during a driving day that would affect the safe operation of the CMV or result in a mechanical breakdown. Drivers must submit this report to the employing passenger carrier so that repairs can be made. Prior to this final rule, § 396.11(a)(2) required drivers of passenger-carrying CMVs to file the DVIR even if there were no vehicle defects to report. Motor carriers were required to maintain the original DVIR, the certification of repairs, and the certification of the driver's review for 3 months from the date the written report was prepared. This final rule eliminates the need for a driver to file, and a motor carrier to maintain, a no-defect DVIR.

The Agency estimates that passenger-carrying CMV drivers spend approximately 2.4 million hours each year completing no-defect DVIRs, and that the final rule will result in potential cost savings of \$74 million per year. There is no discernible safety benefit to this no defect DVIR burden. The Agency estimates that this rulemaking will result in reduced government-imposed costs, and therefore is a deregulatory action under Executive Order (E.O.) 13771, “Reducing Regulation and Controlling Regulatory Costs” (issued January 30, 2017, and published February 3, 2017, at 82 FR 9339).

### **III. LEGAL BASIS FOR THE RULEMAKING**

This final rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) (49 U.S.C. 31502(b)) and the Motor Carrier Safety Act of 1984 (1984 Act) (49 U.S.C. 31136(a)), both of which are broadly discretionary.

The 1935 Act provides that the Secretary of Transportation (Secretary) may prescribe requirements for the following:

- Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier (section 31502(b)(1)) and

- Qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (section 31502(b)(2)).

This rulemaking is based on the Secretary's authority under section 31502(b)(1) and (2).

The 1984 Act authorizes the Secretary to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) requires the Secretary to publish regulations on CMV safety. Specifically, the Act sets forth minimum safety standards to ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely (section 31136(a)(1)); (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely (section 31136(a)(2)); (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely (section 31136(a)(3)); (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (section 31136(a)(4)); and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title (section 31136(a)(5)). The 1984 Act grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate” (section 31133(a)(8) and (10)).

This rule implements, in part, the Administrator's authority under section 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The final rule is also based on the broad recordkeeping and implementation authority of section 31133(a)(8) and (10). This final rule addresses only CMV equipment and reporting requirements. It does not address the question whether drivers' responsibilities affect their ability to operate CMVs safely (section 31136(a)(2)). The provisions of the 1984 Act dealing with the physical condition of drivers (section 31136(a)(3) and (4)) do not apply.

Finally, to ensure that operators of CMVs are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a CMV in violation of a regulation, the rule eliminates only the requirement that drivers of passenger-carrying CMVs prepare no-defect DVIRs; it retains the rule requiring reports when there are defects or deficiencies, as well as the requirement for motor carriers to take appropriate action on receipt of the report. Because the rule removes a regulatory burden criticized by both drivers and motor carriers (and irrelevant to passenger brokers or tour groups), there is virtually no possibility that the driver of a passenger-carrying CMV would be coerced to violate the rule itself. A passenger carrier may require a driver to continue filing no-defect DVIRs, even in the absence of a regulatory requirement, as a condition of employment to perform duties not required by part 396, which would therefore not constitute coercion to violate a safety regulation.

#### **IV. DISCUSSION OF PROPOSED RULEMAKING AND COMMENTS**

##### **A. Proposed Rulemaking**

On November 12, 2019, FMCSA published in the *Federal Register* a notice of proposed rulemaking (NPRM) titled “Passenger Carrier No-Defect Driver Vehicle Inspection Reports” (84 FR 60990). The NPRM proposed to rescind the requirement that drivers of passenger-carrying CMVs operating in interstate commerce submit, and motor carriers retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies. The proposal, adopted by this final rule, would remove an information collection burden without adversely impacting safety.

#### B. Comments and Responses

FMCSA solicited comments to the NPRM for a 60-day period, ending on January 13, 2020. The Agency received a total of 12 comments from: United Motorcoach Association (UMA), Western Trails Charter & Tours (Western Trails), Freedom Excursions by Scully (Freedom Excursions), Coach USA, American Bus Association (ABA), and seven individuals. No public meeting was requested or held.

#### **Comments Supporting the Proposal**

Eight commenters favored the proposal. Most pointed to the potential savings in time and paperwork.

UMA supported the proposed rule, stating that “Elimination of this burdensome regulation will readily reduce regulatory cost with no discernable reduction of safety in the passenger carrier industry.” UMA added that, while some passenger carriers will continue to require drivers to prepare and submit no-defect DVIRs, elimination of the regulatory requirement to do so will improve the effectiveness of investigations and safety audits because enforcement personnel will not have to review no-defect DVIRs.

Western Trails and four individuals stated that the rule would eliminate an unnecessary paperwork burden that has little safety benefit.<sup>1</sup> Freedom Excursions noted that requiring a DVIR only when defects or deficiencies are noted will allow the company to focus on safety sensitive issues.

ABA stated that “In general, we support the elimination of unnecessary administrative burdens for motorcoach and other passenger carriers, which DVIRs appear to present,” and noted that “the retention of unnecessary and non-actionable documentation is a burden ripe for evaluation under the U.S. Department’s new final rule codifying reforms to the Department’s rulemaking procedures.”<sup>2</sup>

### **Comments Opposed to the Proposal**

Coach USA did not support the proposed rule, stating that it will continue to require its drivers to prepare and submit no-defect DVIRs and will continue to retain those DVIRs, regardless of FMCSA’s decision. Coach USA stated if a driver is not required to complete and submit a DVIR, it has no way of confirming that the driver completed the required vehicle inspections. Coach USA noted that eliminating the requirement to prepare no-defect DVIRs “would leave a significant gap in Coach USA’s vehicle maintenance process through which vehicle condition information (even a lack of defects/deficiencies) is directly communicated by drivers to dispatch/maintenance operations.”

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<sup>1</sup> One of the individual commenters also raised concerns that are outside the scope of this rulemaking.

<sup>2</sup> In its comments to the docket, ABA also noted that it “shares some of the safety concerns raised by other commenters,” and requested that FMCSA reopen the comment period for an additional 30 days. FMCSA declined to reopen the comment period.

Additionally, Coach USA contends that drivers may become complacent with respect to performing the required inspections if the requirement to prepare a no-defect DVIR is eliminated, and that “the DVIR serves a vital recordkeeping purpose to document drivers’ completion of all required inspections.” Coach USA expressed concerns that other passenger carriers may not retain no-defect DVIRs, and that a resulting increase in bus crashes could negatively affect the public’s perception of the bus industry.

One individual commenter indicated that the failure to generate no-defect DVIRs in the passenger-carrier industry, where a CMV is often operated by several drivers in a single day, would make it difficult to identify the driver who failed to file a DVIR when a defect is discovered at the end of the day. Because of this difference in operations, the commenter suggested eliminating no-defect DVIRs only where one driver operates the same vehicle for consecutive days.

Two individual commenters cited concerns that eliminating no-defect DVIRs may lead to a greater potential for civil liability if there is no documentation that vehicles were inspected properly and safe to operate.

*FMCSA Response.* The fundamental requirement of the Federal Motor Carrier Safety Regulations (FMCSRs) is for motor carriers to ensure that their CMVs are in safe and proper operating condition at all times. Drivers and motor carriers have long been required to share the safety responsibility both for operating CMVs and for assessing their condition and documenting deficiencies and subsequent repairs. Section 392.7(a) states that “[n]o commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order.” Section 393.1(b)(1)



provides that “[e]very motor carrier and its employees must be knowledgeable of and comply with the requirements and specifications of this part,” and § 393.1(c) states that no motor carrier may operate a commercial motor vehicle, or cause or permit such vehicle to be operated, unless it is equipped in accordance with the requirements and specifications of the part. Section 396.3(a)(1) requires that “[p]arts and accessories shall be in safe and proper operating condition at all times.” Section 396.11(a) states that every motor carrier must “require its drivers to report, and every driver shall prepare a report in writing at the completion of each day’s work on each vehicle operated,” covering a specific list of parts and accessories. Section 396.11(c) states that prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of a vehicle.

FMCSA emphasizes that the Agency is not foregoing the fundamental requirements of part 393, Parts and Accessories Necessary for Safe Operation, nor is it changing any other element of the inspection, repair, and maintenance requirements of part 396. Drivers are still required to perform pre-trip evaluations of equipment condition and complete DVIRs if any defects or deficiencies are discovered or reported during the day’s operations. Motor carriers are still required to have systematic inspection, repair, and maintenance (including preventative maintenance) programs and to maintain records to prove measures are being taken to reduce, to the extent practicable the risk of mechanical problems occurring while the vehicle is in operation. In addition, motor carriers are still required to review DVIRs that list defects or deficiencies and to take appropriate action before the vehicle is dispatched again. The Agency retains the

requirement that carriers complete periodic or annual inspections and maintain documentation for the individuals who perform periodic inspections and brake-related inspection, repair, and maintenance tasks. Furthermore, these CMVs remain subject to inspections.

Importantly, FMCSA did not propose to prohibit passenger carriers from requiring their drivers to prepare DVIRs, even when the driver has no vehicle defects to report. All motor carriers, including passenger carriers, are free to continue to require no-defect DVIRs.

Coach USA's concern about a possible reduction in safety, resulting from the failure of drivers to conduct required inspections and thus failing to detect unsafe conditions, is like concerns noted in opposition to the 2014 rule<sup>3</sup> that eliminated the requirement for no-defect DVIRs for property-carrying vehicles. As noted in the NPRM for this rule, FMCSA reviewed available data spanning several years on vehicle out-of-service rates for both trucks and passenger-carrying vehicles, including data before and after implementation of the 2014 final rule. FMCSA's Motor Carrier Management Information System (MCMIS) data show that the vehicle out-of-service rate for trucks is consistently about 21 percent annually – both before and after implementation of the 2014 final rule. While the Agency received several public comments to the NPRM for that rule (78 FR 48125, Aug. 7, 2013)), expressing concern that eliminating the requirement for no-defect DVIRs would result in (1) a reduced level of safety and maintenance and (2) a higher percentage of vehicle violations and out-of-service orders,

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<sup>3</sup> 79 FR 75437, Dec. 18, 2014. To view the rule, its associated documentation, and the comments received go to <https://www.regulations.gov/docket?D=FMCSA-2012-0336>.

the data show that the vehicle out-of-service rate for trucks has remained nearly constant before and after implementation of the 2014 rule.

The MCMIS data also show that the vehicle out-of-service rate for passenger-carrying vehicles is approximately 6.6 percent annually – consistently less than one-third of the corresponding vehicle out-of-service rate for trucks. From this data, it is clear that motor carriers of passengers – because of the nature of their operations and the sensitive cargo they transport – have established and implemented comprehensive inspection, repair and maintenance programs that help ensure that their vehicles are in safe and proper operating condition at a rate that far exceeds that of other CMVs. As noted above, implementation of the 2014 rule eliminating no-defect DVIRs for trucks has not resulted in a reduced level of maintenance and safety or a higher percentage of vehicle and out-of-service violations. Given that passenger-carrying vehicles have a significantly lower vehicle out-of-service rate generally, the Agency does not believe that extending to them the same relief from the preparation and retention of no-defect DVIRs will result in any degradation in safety.

FMCSA recognizes that passenger-carrying CMVs are often operated by several drivers in a single day, but § 396.11(a) requires every driver to (1) perform a post-trip inspection of each vehicle operated during the day and (2) prepare a DVIR, if defects or deficiencies are discovered by or reported to the driver. The Agency does not believe that amendments are necessary to address operating scenarios in which a CMV is operated by multiple drivers in a single day.

With respect to the concerns about civil liability, FMCSA emphasizes that it is not eliminating the fundamental requirements of part 393, Parts and Accessories Necessary

for Safe Operation, nor is it changing any other element of the inspection, repair, and maintenance requirements of part 396. The rule does not change the requirement for CMV drivers to conduct pre- and post-trip vehicle inspections, nor does it change the requirement for CMV drivers to report defects or deficiencies that were found by or reported to them.

#### **Review of Last DVIR (49 CFR 396.13(b))**

UMA commented that § 396.13(b) requires that, before driving a motor vehicle, a driver must “review the last driver vehicle inspection report.”

FMCSA notes that this requirement was established at a time when a DVIR was required at the completion of every day, regardless of whether defects or deficiencies were discovered by or reported to the driver. However, with the adoption of this final rule, a DVIR from the previous trip will now be available for review by a driver prior to operation of a vehicle only if (1) defects or deficiencies were discovered by or reported to the previous driver or (2) a motor carrier voluntarily opts to require its drivers to prepare no-defect DVIRs. Given that a large percentage of vehicles may not have a DVIR from the previous trip for a driver to review prior to operation, FMCSA is amending § 396.13(b) to clarify that before driving a motor vehicle, a driver shall review the DVIR if required by § 396.11(a)(2)(i).

#### **V. INTERNATIONAL IMPACTS**

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an

international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

## **VI. SECTION-BY-SECTION ANALYSIS**

This final rule amends the last sentence in 49 CFR 396.11(a)(2) that currently provides that the driver of a passenger-carrying CMV subject to this regulation must prepare a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver. FMCSA revises the sentence to provide that drivers are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver. This final rule also amends 49 CFR 396.13(b) to require drivers, before driving a motor vehicle, to “[r]eview the driver vehicle inspection report if required by § 396.11(a)(2)(i).”

## **VII. REGULATORY ANALYSES**

### **A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures**

Under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review, this final rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, the Office of Management and Budget has not reviewed it under these Orders. In addition, this rule is not significant within the meaning of DOT regulations (49 CFR 5.13(a)).

### **Baseline for the Analysis**

Under § 396.11, interstate passenger carriers (except private (nonbusiness) carriers, driveaway-towaway operations, or those operating only one CMV) must require their drivers to prepare a DVIR at the completion of work each day for each vehicle operated that covers at a minimum:

- Service brakes including trailer brake connections
- Parking brake
- Steering mechanism
- Lighting devices and reflectors
- Tires
- Horn
- Windshield wipers
- Rear vision mirrors
- Coupling devices
- Wheels and rims
- Emergency equipment.

The report must list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation or result in mechanical breakdown. The driver of a passenger-carrying vehicle must prepare and submit the report even if no defect or deficiency is identified and the carrier must retain the report for 3 months from the date the written report was prepared.

Passenger carriers have used various means of compliance with this requirement

including paper DVIRs and associated processes for tracking and filing (e.g., separating DVIRs that identify defects from those that do not; maintaining separate files of each) and electronic systems for completing a DVIR and retaining the record.<sup>4</sup>

FMCSA does not have information on the ratio of electronic versus paper-based DVIR processes used by passenger carriers. Regardless of the means of compliance, the burden associated with the requirement to complete no-defect DVIRs is estimated at 155 seconds per report in the most recent approved supporting statement for Information Collection Request (ICR), Office of Management and Budget (OMB) control number 2126-0003.

The supporting statement to the ICR estimated that there are 247,496 passenger-carrying CMVs in operation and subject to the DVIR requirements. As such, the no-defect DVIR rule imposes a substantial time and paperwork burden on passenger carriers with no discernible safety benefit.

### **Costs**

In 2014, the Agency estimated cost savings associated with eliminating the requirement for no-defect DVIRs for property-carrying CMVs. As that rule is analogous to this final rule, the analysis follows the same approach. The Agency's 2018 approved supporting statement for ICR 2126-0003 states that there are 247,496 passenger-carrying CMVs for which DVIRs must be prepared, submitted, and reviewed.

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<sup>4</sup>J.J. Keller provides a sample paper report available at [https://www.jjkellertraining.com/Samples/28146\\_JJK\\_Motor\\_Coach\\_Vehicle\\_Inspections\\_DEMO/story\\_content/external\\_files/DVIR.pdf](https://www.jjkellertraining.com/Samples/28146_JJK_Motor_Coach_Vehicle_Inspections_DEMO/story_content/external_files/DVIR.pdf). A wide variety of vendors supply electronic DVIR systems, such as <https://www.teletracnavman.com/our-solutions/compliance/dvir>, <https://www.verizonconnect.com/resources/article/electronic-inspection-form-dvir/>, and <https://fleetrevolution.com/fleetrevolution-bus-dvir>.

Consistent with the methodology of the supporting statement and the 2014 analysis, the Agency assumes that each of these vehicles is used 65 percent of the days of the year, and that 95 percent of DVIRs are no-defect DVIRs for which it estimated a burden of 155 seconds. Therefore, the Agency estimated a paperwork burden of 2,401,747 hours  $[247,496 \text{ vehicles} \times (0.65 \times 365) \times 0.95 \times 155 = 8,646,288,229 \text{ seconds}]$  or 2,401,747 hours]. Using a labor rate of \$31 per hour,<sup>5</sup> the Agency estimates a potential cost savings of \$74 million per year, assuming all carriers choose to realize these cost savings and eliminate no-defect DVIRs.

Therefore, this final rule will result in potential cost savings of \$74 million per year (Table 1).

**Table 1. Calculation of Annual Cost Savings**

Variable	Value
Number of CMVs	247,496
Frequency of daily usage	65%
Frequency of no-defect DVIRs	95%
Time to complete a no-defect DVIR (seconds)	155
Total time saved (hours)	2,401,747
Wage rate (per hour) <sup>1</sup>	\$31
Total savings	\$73,665,012
<sup>1</sup> The mean hourly wage national estimate for occupational code 53-3021, Bus Drivers, Transit and Intercity is \$21.47. Source: Bureau of Labor Statistics (BLS). 2019. May 2018 National Industry-Specific Occupational Employment and Wage Estimates. <a href="https://www.bls.gov/oes/2018/may/oes533021.htm">https://www.bls.gov/oes/2018/may/oes533021.htm</a> . The wage rate is scaled up using the following formula: $21.47 \div 0.7$ . This reflects an estimate of the total labor costs; wages and salaries accounted for 70.0% of total employee cost for private industry workers in	

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<sup>5</sup> This wage is specific to bus drivers. Note that this rate differs from that used in the approved supporting statement which reflected the wage for a business operations specialist in the truck transportation industry.



**Table 1. Calculation of Annual Cost Savings**

Variable	Value
December 2018 (BLS, 2019; <a href="https://www.bls.gov/news.release/archives/ecec_03192019.pdf">https://www.bls.gov/news.release/archives/ecec_03192019.pdf</a> ).	

In the 2019 NPRM, the Agency acknowledged that some carriers might continue to require their drivers to submit no-defect DVIRs, thereby lowering the estimated cost savings. The Agency received feedback from one commenter, Coach USA, indicating it would continue to require no-defect DVIRs. FMCSA has opted to present the impact on cost savings of Coach USA's decision for illustrative purposes only. The Agency considered adjusting the total estimate of cost savings from this rule to account for this comment. However, the change in impact would be de minimis, as illustrated below, and FMCSA believes this would add a level of complexity to the analysis that implies a greater degree of precision than which is possible. While it is possible that other carriers may also continue to require no-defect DVIRs, the Agency did not receive feedback in response to the NPRM to inform any changes to that assumption in this analysis.

Coach USA indicated that it operates 2,800 motorcoaches. Using the same formula described above with an updated population of 244,696 vehicles ( $247,496 - 2,800 = 244,696$ ), we estimate the paperwork burden at 2,374,575 hours.<sup>6</sup> Using the labor rate above of \$31, the total cost savings in this example would be \$72,831,617 (a difference of \$833,395), or \$73 million, rounded.

### **Benefits**

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<sup>6</sup>  $244,696 \text{ vehicles} \times (0.65 \times 365) \times 0.95 \times 155 = 8,548,470,054 \text{ seconds or } 2,374,575 \text{ hours.}$

The final rule benefits relate to the change in crash risk, if any, that would result from allowing a defect-based DVIR approach. The Agency has no information to suggest that preparation, submission, and review of no-defect DVIRs produce a greater level of safety than that of a defect-based approach. Further, no degradation in safety attributable to the 2014 elimination of the no-defect DVIR requirement for trucks has been observed. Both the baseline approach and the defect-based approach ensure that vehicles are inspected so that defects are noted and addressed. Therefore, the Agency estimates that this final rule will maintain the same level of safety.

#### **B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs**

E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017). E.O. 13771 requires that, for every one new regulation issued by an Agency, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. Final implementation guidance addressing the requirements of E.O. 13771 was issued by OMB on April 5, 2017. The OMB guidance defines what constitutes an E.O. 13771 regulatory action and an E.O. 13771 deregulatory action, provides procedures for how agencies should account for the costs and cost savings of such actions, and outlines various other details regarding implementation of E.O. 13771. An E.O. 13771 deregulatory action is defined as “an action that has been finalized and

has total costs less than zero.” This final rule has a total cost less than zero, and therefore is an E.O. 13771 deregulatory action.<sup>7</sup>

The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the rule goes into effect and cost savings would first be realized), is \$1 billion. On an annualized basis, these cost savings are \$71 million. For E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016.<sup>8</sup> In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, is \$771 million. On an annualized basis, these cost savings are \$54 million.

### **C. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801, et seq.), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).<sup>9</sup>

### **D. Regulatory Flexibility Act (Small Entities)**

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<sup>7</sup> Executive Office of the President. Office of Management and Budget. Memorandum M-17-21. Guidance implementing Executive Order 13771. April 5, 2017. Q4 on page 4.

<sup>8</sup> Executive Office of the President. Office of Management and Budget. Memorandum M-17-21. Guidance Implementing Executive Order 13771. April 5, 2017. Q25 on page 11.

<sup>9</sup> A “major rule” means any rule that the Administrator of Office of Information and Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires Federal agencies to consider the effects of a regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with a population of less than 50,000.

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies try to minimize any adverse effects on these entities. Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), the Agency estimates this final rule will have a positive economic impact on small entities in the form of cost savings through the elimination of 2.4 million paperwork burden hours, or 155 seconds per report.

In the Initial Regulatory Flexibility Analysis (IRFA) to the proposed rule, FMCSA invited comment from members of the public who believed the proposed action would create a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000. No comments were submitted by these entities to indicate that this reduction of 155 seconds is significant.

As stated in the IRFA of the proposed rule, the Agency does not have data on company affiliations, NAICS (North American Industry Classification System) codes, revenues, or employees with which to determine how many of these carriers are small entities, or to directly estimate the rule’s impact on them. Therefore, FMCSA examined the impact to small entities using a conservative per-vehicle approach illustrated below.

FMCSA estimates that the average savings per vehicle will be \$298 per year. The total savings of burden hours for this rule is 2,401,747, which applies to 247,496 vehicles. With an average annual time savings of 9.7 hours per vehicle (2,401,747 hours ÷ 247,496 vehicles), we estimate the average annual cost savings to be \$298 per vehicle (9.7 hours x wage rate of \$31).<sup>10</sup>

Assuming drivers work 8 hours per day for 65 percent of the days in a year,<sup>11</sup> their compensation (at \$31 per hour) would be approximately \$58,000 per year. Therefore, a single vehicle would need to generate a minimum of \$58,000 per year in revenue in order to break even with driver wages and benefits. This is a conservatively low estimate of annual revenue generated per vehicle, as it is insufficient to cover the carrier's overhead, vehicle purchase or financing costs, maintenance and repair costs, and fuel expenses, and it provides no profit margin to the carrier.

Using the low-range estimate of \$58,000/year, if the average savings per vehicle is \$298 per year, this final rule will produce savings of no more than 0.5 percent ( $\$298 \div \$58,000$ ) of the average annual revenue needed to support one employee.

The RFA does not define a threshold for determining whether a specific regulation results in a significant impact. However, the SBA (Small Business Administration), in guidance to government agencies, provides some objective measures

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<sup>10</sup> *Id.* at 16.

<sup>11</sup> Consistent with the methodology of the supporting statement and the 2014 analysis, the Agency assumes that each of these vehicles is used 65 percent of the days of the year. Eight hours per day is a conservative assumption as drivers may drive more than 8 hours per day, but the Agency chose this lesser value to demonstrate that the impact of the cost savings is not significant even for small entities that do not maximize available driver hours.

of significance that the agencies can consider using.<sup>12</sup> One measure that could be used to illustrate a significant impact is labor costs, specifically, if the cost of the regulation exceeds 1 percent of the average annual revenues of small entities in the sector.

Given the average annual per-vehicle impact of \$298, a small entity would need to have average annual revenues of less than \$29,800 per vehicle to experience an impact greater than 1 percent of average annual revenue, which is an average annual revenue that is smaller than would be required for a firm to support one employee. The savings of \$298 per vehicle relative to minimum necessary revenues of \$58,000 per vehicle represent 0.5 percent, and as such, are below a 1 percent threshold of significance. Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### **E. Assistance for Small Entities**

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement

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<sup>12</sup> SBA, Office of Advocacy. "A Guide for Government Agencies. How to Comply with the Regulatory Flexibility Act." 2017. Available at: <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf> (accessed on May 7, 2020).

Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

#### **F. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$165 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2018 levels) or more in any one year. Though this final rule would not result in such an expenditure, the Agency does discuss its effects elsewhere in this preamble.

#### **G. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires FMCSA to consider the impact of paperwork and other information collection burdens imposed on the public. This rule reduces the burden hours for the "Inspection, Repair, and Maintenance" ICR, OMB control number 2126-0003. This ICR comprises ten individual information collections, each corresponding to a different area of the inspection, repair, and maintenance requirements. This rule affects only the ICR section dealing with burden hours associated with no-defect DVIRs for passenger-carrying vehicles.

In 2018, based on data from its MCMIS and Licensing and Insurance Systems, FMSCA concluded that there were 247,496 passenger-carrying CMVs. Consistent with past analyses of this ICR, the Agency assumed that these CMVs are used on average 65 percent of the year.

FMCSA has divided the DVIR process into two steps. The Agency estimated that the first step, filling out a DVIR, takes 2 minutes, 30 seconds. The Agency estimated that the second step, reviewing and signing a DVIR, takes 20 seconds, when defects are reported, and 5 seconds when no defects are reported. When there are no defects to note, there is nothing to review on the DVIR, and the form requires only a signature. The Agency estimates that 5 percent of DVIRs note defects and 95 percent of DVIRs note no defects.

This rule eliminates the burden hours associated with no-defect DVIRs for passenger-carrying CMVs, resulting in an annual reduction of 2,401,747 burden hours ( $247,496 \text{ CMVs} \times 65\% \text{ utilization} \times 365 \text{ days} \times 95\% \text{ of CMVs} \times 155 \text{ seconds} \div 3,600 \text{ seconds per hour}$ ). The monetary value of this annual burden reduction, calculated using an hourly labor cost of \$31, is \$73,665,012 million ( $2,401,747 \text{ hours} \times \$31, \text{ per hour}$ ).

#### **H. E.O. 13132 (Federalism)**

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this



rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

## **I. Privacy**

The Consolidated Appropriations Act, 2005,<sup>13</sup> requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule would not require the collection of personally identifiable information (PII). The supporting PIA, available for review in the docket, gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to this final rule.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,<sup>14</sup> requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

Additionally, the Agency submitted a Privacy Threshold Assessment to evaluate the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create a privacy risk.

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<sup>13</sup> Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

<sup>14</sup> Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

#### **J. E.O. 13175 (Indian Tribal Governments)**

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### **K. National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the Agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

#### **L. National Environmental Policy Act of 1969 (NEPA).**

FMCSA analyzed this final rule consistent with the NEPA (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680 (Mar. 1, 2004)), Appendix 2, paragraph (6)(aa). The Categorical Exclusion (CE) in paragraph (6)(aa) relates to regulations requiring motor carriers, drivers, and others to “inspect, repair, and provide maintenance for every CMV

used on a public road,” which is the focus of this rule. The requirements in this rule are covered by this CE, there are no extraordinary circumstances present, and the action does not have the potential to significantly affect the quality of the environment.

#### **M. E.O. 13783 (Promoting Energy Independence and Economic Growth)**

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.E.O.

#### **List of Subjects in 49 CFR Part 396**

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Accordingly, FMCSA amends 49 CFR part 396 as follows:

#### **PART 396-INSPECTION, REPAIR, AND MAINTENANCE**

1. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, 31502; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; sec. 5524, Pub. L. 114-94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

2. Revise § 396.11(a)(2)(i) to read as follows:

#### **§ 396.11 Driver vehicle inspection report(s).**

(a) \* \* \*

(2) *Report content.* (i) The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of

operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated. Drivers are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver.

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3. Revise § 396.13(b) and (c) to read as follows:

**§ 396.13 Driver inspection.**

\* \* \* \* \*

(b) Review the last driver vehicle inspection report if required by § 396.11(a)(2)(i); and

(c) Sign the report to acknowledge that the driver has reviewed it and that there is a certification that the required repairs have been performed. The signature requirement does not apply to listed defects on a towed unit which is no longer part of the vehicle combination.

Issued under authority delegated in 49 CFR 1.87.

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James A. Mullen,  
Deputy Administrator.